

FCC MAIL SECTION

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Federal Communications Commission

DA 97-2129

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-209
Table of Allotments,)	RM-9152
FM Broadcast Stations.)	
(Coarsegold, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 24, 1997

Released: October 3, 1997

Comment Date: November 24, 1997

Reply Comment Date: December 9, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Thomas L. Whitlock d.b.a. West Coast Wireless ("petitioner") requesting the allotment of FM Channel 233A to Coarsegold, California, as that community's first local aural transmission service. Petitioner stated its intention to apply for Channel 233A if it is allotted to Coarsegold as requested.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission fairly, equitably and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, ("Census") that is sufficient to satisfy its status. Coarsegold is not listed in the Census.¹

3. In light of Coarsegold's omission from the Census, yet in recognition of Commission precedent requiring adequate information in such situations to demonstrate that a locality has social, economic, or cultural indicia to qualify it as a community for allotment purposes,²

¹We note that Coarsegold is listed in the 1995 edition of the Rand McNally *Commercial Atlas and Marketing Guide*, which attributes it with a post office and zip code also. However, those combined factors are not sufficient to establish community status. See *Vinville, Mississippi*, 55 RR 2d 256 (1983), *appl. for review denied*, FCC 85-141, released March 27, 1985; see also *Crestview and Westbay, Florida*, 7 FCC Red 3059 (1992), and cases cited therein.

²See, e.g., *Gretna, Florida, et. al.*, 6 FCC Red 633 (1991); *Oak Grove, Florida*, 5 FCC Red 3774 (1990); and *Statenville, Georgia*, 5 FCC Red 2685 (1990).

petitioner advises that Coarsegold (population 6,950),³ is located in Eastern Madera County and contains the usual indicia comprising a "community", as that term is used for allotment purposes. Further, petitioner advises that according to information provided by the Eastern Madera County Chamber of Commerce, based upon March 1995 estimates, there are 13,418 residents within a seven mile radius of Coarsegold. According to petitioner, Coarsegold contains many cultural activities as well as such professions as cattle ranching, and to a lesser extent, lumber and mining. Further, petitioner reports that among other facilities, in addition to its own post office (zip code 93614), Coarsegold has five churches, entertainment, a school district, community center, volunteer fire department, markets, hardware store, garden nursery, realtors, motels, RV campgrounds, banking facilities, dentists, restaurants, and the famous Coarsegold Rodeo Grounds. Moreover, petitioner states that community organizations include a 4-H Club, Grandmothers Club, and Historical Society, the latter of which petitioner reports is currently constructing a museum in Coarsegold.⁴ Additionally, petitioner reports that as Coarsegold is located along Highway 41, leading to Yosemite National Park, the community benefits from income obtained from the millions of tourists each year who travel through Coarsegold to visit Yosemite. Petitioner adds that the requested allotment of Channel 233A to Coarsegold would also provide a local outlet for the dissemination of essential information to its residents and to those in surrounding areas concerning icy road conditions during the winter months, as well as school closures and late bus reports when inclement weather has blocked transportation routes. Based upon petitioner's presentation, we will not request additional demographic data at this time. Therefore, we will propose the allotment of Channel 233A to Coarsegold, California, as requested.

4. A staff engineering analysis reveals that Channel 233A can be allotted to Coarsegold consistent with the minimum distance separation requirements of the Commission's Rules provided the transmitter therefor is located at least 5.7 km (3.5 miles) north of the community, utilizing in this instance coordinates 37-18-51 and 119-42-20.

5. In light of the interest expressed in providing a first local aural transmission service to Coarsegold, we believe it is appropriate to seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to that community, as follows:

Channel No.

³Population figure was taken from the 1990 U.S. Census

⁴Petitioner also provided a list of civic clubs and organizations located within the 60 dBu contour of Coarsegold. However, in evaluating indicia relevant to establishing community status for rule making purposes, we consider only those elements which identify themselves with the requested community of license.

⁵The restriction placed on Channel 233A at Coarsegold is required to negate a short-spacing to the licensed site Station KTAA(FM), Channel 232A, Kerman, California, at coordinates 36-44-29 and 120-05-08.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Coarsegold, California	--	233A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 24, 1997, and reply comments on or before December 9, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

James A. Koerner, Esq.
Baraff, Koerner & Olender, P.C.
Three Bethesda Metro Center
Suite 640
Bethesda, MD 20814.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other

parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.